

CHAPTER VII. ✓

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER
MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS
WRONGFULLY CONFINED.A.—*Summons to produce.*

Summons to
produce
document or
other thing.

94. (1) Whenever any Court or in any place beyond the limits of the towns of Calcutta and Bombay any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Summons to
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94. (1) Whenever any Court, or in any place ¹[*beyond the limits of Greater Bombay*], any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities. ^{1 of 1872.}

Procedure as
to letters and
telegrams.

95. (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—*Search-warrants.*

When search-
warrant may
be issued.

96. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,

¹ Substituted by Bom. 23 of 1951, s. 2 and Sch. Part I, for "beyond the limits of the towns of Calcutta and Bombay."

or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified. Power to restrict warrant.

98. (1) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, Search of house suspected to contain stolen property, forged documents, etc.

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

[or, if a District Magistrate, Sub-divisional Magistrate or a Presidency Magistrate upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in section 292 of the Indian Penal Code or that any such obscene objects are kept or deposited in any place;]

he may by his warrant authorize any police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials [or of any such obscene objects] as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments or materials [or such obscene objects] before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials [or such obscene objects] knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging [or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated imported or exported.]

¹ Inserted by the Obscene Publications Act, 1925 (8 of 1925), s. 3.

(2) The provisions of this section with respect to—

- (a) counterfeit coin,
- (b) coin suspected to be counterfeit, and
- (c) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply respectively to—

(a) pieces of metal made in contravention of the Metal Tokens Act, 1889, or ^{I of 1889.} brought into ¹[India] in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878,

(b) pieces of metal suspected to have been so made or to have been so brought into ¹[India] or to be intended to be issued in contravention of the former of those Acts, and ^{VIII of 1878.}

(c) instruments or materials for making pieces of metal in contravention of that Act.

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

Power to declare certain publications forfeited and to issue search-warrants for the same.

* 2[99A. (1) Where—

(a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or ^{XXV of 1867.}

(b) any document,

wherever printed, appears to the ³[⁴State] Government] to contain any seditious matter ⁵[or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of ⁶the citizens of India] ⁷[or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class], that is to say, any matter the publication of which is punishable under section 124A ⁸[or section 153A] ⁹[or section 295A] of the Indian Penal Code, the ³[⁴State] Government] may, by notification in the ¹⁰[Official Gazette], stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, ^{XLV of 1860.}

¹ The words "British India" have successively been substituted by the A. O. 1948, A. O. 1950 and Act I of 1951 to read as above.

² Ss. 99A to 99G ins. by the Press Law Repeal and Amendment Act, 1922 (14 of 1922), s. 5, Sch. III.

³ Substituted by the A. O. 1937 for "L. G.".

⁴ Substituted by the A. O. 1950 for "Provincial".

⁵ Inserted by the Code of Criminal Procedure (Third Amendment) Act, 1926 (36 of 1926), s. 2.

⁶ Substituted by the A. O. 1950 for "His Majesty's subjects".

⁷ Inserted by the Criminal Law Amendment Act, 1927 (25 of 1927), s. 3.

⁸ Inserted by the Code of Criminal Procedure (Third Amendment) Act, 1926 (36 of 1926), s. 2.

⁹ Inserted by the Criminal Law Amendment Act, 1927 (25 of 1927), s. 3.

¹⁰ Substituted by the A. O. 1937 for "local official Gazette".

and every copy of such book or other document to be forfeited to ¹[Government] and thereupon any police-officer may seize the same wherever found in ²[India] and any Magistrate may by warrant authorize any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.

✕ 99B. Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any ³[seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A]. Application to High Court to set aside order of forfeiture.

✕ 99C. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges. Hearing by Special Bench.

✕ 99D. (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained ⁴[seditious or other matter of such a nature as is] referred to in sub-section (1) of section 99A, set aside the order of forfeiture. Order of Special Bench setting aside forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench the decision shall be in accordance with the opinion of the majority of those Judges.

✕ 99E. On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, ⁵[in respect of which the order of forfeiture was made]. Evidence to prove nature or tendency of newspapers.

✕ 99F. Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications. Procedure in High Court.

✕ 99G. No order passed or action taken under section 99A shall be called in question in any Court otherwise than in accordance with the provisions of section 99B.] Jurisdiction barred.

C.—Discovery of Persons wrongfully confined.

• 100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for Search for persons wrongfully confined.

¹ Substituted by the A. O. 1950 for "His Majesty".

² The words "British India" have successively been substituted by the A. O. 1948, A. O. 1950 and Act 1 of 1951 to read as above.

³ Substituted by Act 36 of 1926, s. 3, for "seditious matter".

⁴ Substituted by s. 4, *ibid*, for "seditious matter of the nature".

⁵ Substituted by s. 5, *ibid*, for "which are alleged to be seditious matter".

the person so confined ; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

D.—General Provisions relating to Searches.

Direction, etc., of search warrants. 101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98, ¹[section 99A] or section 100.

Persons in charge of closed place to allow search. 102. (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.

Search to be made in presence of witnesses. 103. (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search ²[and may issue an order in writing to them or any of them so to do].

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses ; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend. (3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person ³* * *

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person ³* * *

²[(5) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code.]

XLV
of
1860.

E.—Miscellaneous.

Power to impound document, etc., produced. 104. Any Court may, if it thinks fit, impound any document or thing produced, before it under this Code.

Magistrate may direct search in his presence. 105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

¹ Inserted by the Press Law Repeal and Amendment Act, 1922 (14 of 1922), s. 5 and Sch. III.

² Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 14.

³ The words "at his request" were omitted by Act 26 of 1955, s. 15.